No. 93-1883 (3)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD in his capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, for herself and as Guardian Ad Litem for VERNAIS EDWARDS, PAMELA EDWARDS and ERICKA EDWARDS; BARBARA MOORE, for herself and as Guardian Ad Litem for REBIANA ROBI, DERRAL ROBI, DELISHA JAA, RAYLEISHA TAYLOR; and VANESSA HAMILTON for herself and as Guardian Ad Litem for JONNY WATSON, CLEO THOMAS, RICKY MCDONALD, JIMMY PASHELL, and STANLEY HAMILTON, on behalf of themselves and all others similarly situated,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

Petitioners, Eloise Anderson, successor in interest to John D. Healy, as Director of the California Department of Social Services, and Russell Gould, successor in interest to Thomas Hayes, as Director of the California Department of

Finance,[1] (hereinafter, "petitioners") hereby respectfully submit this Supplemental Brief. This Supplemental Brief is filed in order to draw the Court's attention to a new case which was not available at the time of filing of the petition, and which is pertinent to the Court's decision whether a writ of certiorari should be granted in this matter.

Supreme Court Rule 10.1(a) provides that a petition for writ of certiorari may be granted when a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter. Since the filing of California's Petition for Writ of Certiorari, such a conflict among the circuits has developed. On June 2, 1994, 13 days after petitioners filed their Petition for Writ of Certiorari, the United States Court of Appeals for the Second Circuit issued its decision in the matter of *Bray v. Dowling*, ___ F.3d ___ (2d Cir. 1994) 1994 U.S. App. LEXIS 13021. In *Bray*, plaintiffs challenge a New York State administrative policy which implements the AFDC program and includes all children living with an adult caretaker relative in one AFDC budgeting unit even if the household contains children who the caretaker is not legally responsible to support under state law. *Bray*, ___F.3d ___ (2d Cir. 1994) at p. 5.[2] [3] *Bray* therefore is the Second Circuit counterpart to the instant action, as well as to the case of *Beaton v. Thompson*, 913 F.2d 701 (9th Cir. 1990).

The United States District Court for the Northern District of New York deemed the New York non-sibling filing unit rule to be contrary to federal law based, in part, on the

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[1] Petitioner Russell Gould is not the Controller of the State of California, nor is Thomas Hayes the former Controller as was erroneously stated on page 1 of the Petition for Writ of Certiorari.

[2] For the purposes of these proceedings, petitioners have referred to this administrative policy or regulation as the "non-sibling filing unit rule." In the *Bray* decision New York's comparable rule is denoted as the "Policy." *Bray*, ___ F.3d ___ (2d Cir. 1994) 5:8.

[3] Citations and page references are to the slip opinion issued by the Second Circuit.

holding and rationale expressed in *Beaton*. On appeal, the Second Circuit, in a detailed and well reasoned decision, reversed the decision and judgment of the district court, thus creating a conflict of law between the Second and Ninth Circuits regarding the validity of the states' non-sibling filing unit rules. *Bray*, ___ F.3d ___ (2d Cir. 1994) pp. 4-5.

Accordingly, in addition to the reasons set forth in California's Petition for Writ of Certiorari for granting the petition, the petition should be granted in order to resolve the conflict of law among the circuits concerning the validity of the states' non-sibling filing unit rules.

The Second Circuit's decision in *Bray* comprehensively analyzes the pertinent federal regulations as well as the applicable case law concerning the validity of the New York non-sibling filing unit rule. Moreover, *Bray* acknowledges the consistent and long-standing position which the federal agencies, the Department of Health and Human Services (DHHS), and its predecessor, the Department of Health Education and Welfare (HEW), have maintained regarding the validity of the non-sibling filing unit rule:

> "Both agencies have consistently taken the position that the states have the option to treat a relative caretaker and minor children in her household for whom she is not legally responsible as a single AFDC assistance unit." *Bray*, ___ F.3d ___ (2d Cir. 1994) 15:20-23.

The Court notes that in an agency memorandum dated October 13, 1976, an HEW administrator opined that:

> " 'States may . . . provide for two AFDC payments in the case of a mother who is the caretaker relative for her own children and her sister's children. In such a situation, the State may establish two budget units or it may include all children in one AFDC payment. Federal matching would be available in either budgeting method.' " *Bray*, ___ F.3d ___ (2d Cir. 1994) 16:3-11.

The Ninth Circuit in *Beaton* and in the instant case erred in failing to defer to the long-standing, consistent interpretations by the agencies entrusted with the administration of the

Social Security Act. See *Bray*, ___ F.3d ___ (2d Cir. 1994) 18:2-16.

In addition to acknowledging the pertinent administrative agency interpretations regarding the non-sibling filing unit rules, the *Bray* decision examined the asserted inconsistency of the non-sibling filing unit rule with the applicable federal regulations and case law authorities, including *Beaton*.

Beaton determined that the non-sibling filing unit rule violated federal law by assuming that income was available from a person having no legal duty or obligation of support to the needy non-sibling. The Ninth Circuit held that the non-sibling filing unit rule,

> "necessarily involves attributing income of the non-legally responsible adult because the plan reduces the grant to the child based on the fact that the child is living with, and thus sharing expenses with, the caretaker relative." *Beaton v. Thompson*, 913 F.2d at 704.

The Second Circuit examined the underlying federal regulations and case law provisions and held, to the contrary, that the "uncertainty of support that animated these cases and the federal regulations is absent here." *Bray*, ___ F.3d ___ (2d Cir. 1994) 21:7-8.

> "Federal law can be read to mandate 'that the caretaker relative use all of the [AFDC] grant for the benefit of everyone in the assistance unit.' (citation)
>
> . . . .
>
> "This legal obligation to spend the grant on behalf of the children in the AFDC unit distinguishes this case from those involving presumption of support from outside income. . . . We therefore conclude that the policy [non-sibling filing unit rule] under which all children living with an adult caretaker relative are considered part of one AFDC assistance unit even if the household contains children for whom the caretaker is not legally responsible, does not contravene §§ 233.20(a)(2)(viii) and 233.90.(a)(1)." *Bray*, ___ F.3d ___ (2d Cir. 1994) 21:9-22:24. (Citations omitted.)

Moreover, the Second Circuit declined to follow *Beaton*, because "*Beaton* did not recognize or discuss the distinction between a single caretaker who is obligated to expend AFDC funds for the benefit of all the minor children in her household and a non-legally responsible individual who has no corresponding obligation." *Bray*, ___ F.3d ___ (2d Cir. 1994) 24:23-25:1. The Second Circuit Court regarded the distinction between these two types of caretakers as dispositive. *Bray*, ___ F.3d ___ (2d Cir. 1994) 25:2.

CONCLUSION

The *Bray* decision rendered by the Second Circuit creates a conflict among the circuits concerning the validity of the states' non-sibling filing unit rules. That conflict must be resolved by this Court. The Ninth Circuit decisions in the instant case and in *Beaton* are erroneous and should be overruled. For the reasons set out in the petition, and in light of the *Bray* decision and the rationale expressed therein, this Court should grant California's Petition for Writ of Certiorari to resolve this important question of federal law and the right of the states in providing AFDC assistance.

DATED: June 16, 1994

Respectfully Submitted,

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